

**FILED**

**JUN 12 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARTURO VEGA-BARAJAS,

Defendant - Appellant.

No. 05-30386

D.C. No. CR-04-02039-RHW

MEMORANDUM\*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARTURO VEGA-BARAJAS,

Defendant - Appellant.

No. 05-30387

D.C. No. CR-04-02040-RHW

Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, District Judge, Presiding

Submitted April 6, 2006\*\*  
Seattle, Washington

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument pursuant to Fed. R. App. P. 34(a)(2).

BEFORE: CANBY, GOULD, and BEA, Circuit Judges.

We affirm the 57-month sentence the district court imposed on Arturo Vega-Barajas for being an alien in the United States following deportation and a prohibited person in possession of a firearm. 8 U.S.C. § 1326; 18 U.S.C. § 922(g)(1). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). *United States v. Plouffe*, No. 05-30045, slip. op. 4495, 4503-04 (9th Cir. April 21, 2006).

The district court properly found that Vega-Barajas's prior conviction exposed him to a statutory maximum sentence of twenty years imprisonment for his current offenses. *See Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998) (holding that prior convictions may be used to enhance a defendant's sentence even if a jury did not find the fact of the conviction beyond a reasonable doubt); *United States v. Pacheco-Zepeda*, 234 F.3d 411, 414 (9th Cir. 2000) (holding that we must follow *Almendarez-Torres* until the Supreme Court overrules it).

We review Vega-Barajas's ultimate sentence for reasonableness in light of the factors in 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 261 (2005). For a sentence to be reasonable, the district court must first accurately

calculate an advisory sentence under the Sentencing Guidelines. *See United States v. Cantrell*, 433 F.3d 1269, 1279-81 (9th Cir. 2006).

The district court properly enhanced Vega-Barajas's offense level under U.S.S.G. § 2L1.2(b)(1)(A) and U.S.S.G. § 2K2.1(a)(4)(A). Vega-Barajas's Sixth Amendment jury trial right did not bar using his prior conviction to enhance his offense level even though a jury did not find the fact of the prior conviction beyond a reasonable doubt. *See United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005). Vega-Barajas's conviction for Lewd Acts Upon a Child constitutes sexual abuse of a minor under U.S.S.G. § 2L1.2, and therefore the sixteen-level enhancement for a prior crime of violence enhancement applies to him. *See United States v. Medina-Maella*, 351 F.3d 944, 947 (9th Cir. 2003). The district court properly found Vega-Barajas's prior conviction of a crime of violence; Vega-Barajas admitted that he was convicted of Lewd Conduct Upon a Child. The court properly took judicial notice of documents that established the statute under which he was previously convicted and the fact of that conviction.

Vega-Barajas's 57-month sentence is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a). *See Cantrell*, 433 F.3d at 1279. The statutory factors require a district court to impose a sentence "sufficient, but not greater than necessary" to "reflect the seriousness of the offense, to promote respect for the

law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public . . . ; and to provide the defendant with needed . . . training, medical care, or other correctional treatment . . . .” 18 U.S.C. § 3553(a)(2). The district court must also consider: the nature and circumstances of the offense; the defendant’s history and characteristics; the kinds of sentences available; the advisory sentencing guidelines range; the Sentencing Commission’s policy statements; unwarranted sentencing disparities; and restitution to victims. 18 U.S.C. § 3553(a)(1), (3)-(7).

The district court sufficiently considered the relevant factors when it sentenced Vega-Barajas. *See United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006) (holding that *Booker* requires the district court to consider the factors in section 3553(a)). A sentencing judge may sufficiently consider the sentencing factors even though he does not specifically articulate each factor or mechanically recite all of the factors at the sentencing hearing. *Id.*; *see also United States v. Dean*, 414 F.3d 725, 728-29 (7th Cir. 2005). Here, the judge discussed the relevant considerations embodied in § 3553(a) and concluded that the most appropriate sentence was within the range the advisory sentencing guidelines recommended. Vega-Barajas’s 57-month sentence was well within the reasonable range of sentences the district court could have imposed in light of the

§ 3553(a) factors. *See United States v. Zavala*, 443 F.3d 1165, 1168-69 (9th Cir. 2006).

**AFFIRMED.**